

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3047 of 2007

Tukaram Bala Teli .. Petitioner
versus
Chandrashekhar Dattatraya Kelkar & ors..Respondents

...

Mr.M.S. Karnik for the petitioner.
Mr.S.M. Railkar for the respondent no.1.

CORAM : D.G. KARNIK, J
DATED : 30th August 2007.

P.C.:

1. Heard learned counsel for the petitioner.
2. This petition is directed against the order dated 3rd March 2007 passed by the learned Civil Judge, Jr.Division, Devgad appointing a Court Commissioner in an execution proceeding.
3. The petitioner is the original defendant. In a suit by the respondents, a decree was passed

against the petitioner restraining him from obstructing the peaceful possession of the respondents. It is the case of the respondents that despite the said decree, possession was being obstructed. The respondents therefore filed an execution proceeding. In the execution proceedings, a dispute was raised by the petitioner as to the identity of the property to which the injunction related. The Court has therefore appointed City Survey Officer as the Court Commissioner to show the boundaries. In my view, the order is a procedural order and passed to give effect to the decree which has already been passed in favour of the respondents.

3. In the penultimate paragraph of the order, the learned Civil Judge has observed :-

"This dispute may continue since land boundaries are not having different map and it appears that no litigant is prepared to get such two different maps. Therefore, with a view to settle this dispute permanently as suggested by this court and agreed by litigants and both the Advocates at present it will be proper to show areas of the litigants and accordingly fixed the

boundary mark as per 7 x 12 extract."
(underlining supplied)

This clearly indicates that the Court Commissioner was appointed by consent of the parties. In the circumstances, no interference in exercise of the writ jurisdiction, is called for. Hence, the petition is rejected summarily.

(D.G. KARNIK, J)